



PLANNING COMMISSION

Department of Urban Planning & Design • P.O. Box 27210 • Tucson, AZ 85726-7210

DATE: November 1, 2006

TO: Planning Commission

FROM: 
Albert Elias AICP, Executive Secretary

SUBJECT: Land Use Code Amendment – C-1 Zone Food Service & Spirituous Liquor

Issue: This item is scheduled tonight as a continuation of the October 4th and August 2nd public hearings. The Mayor and Council have directed staff to bring forward an amendment to the *Land Use Code (LUC)* that will eliminate conflicts between the *LUC* and Title 4 of the Arizona Revised Statute (A.R.S) regarding restaurants that provide full alcohol service.

Recommendation: Staff recommends Option B. It is a process that eliminates a special exception for liquor sales. Option B does not require a public hearing or a restaurant applying for a liquor license. The additional information staff collected does not suggest that this type of land use causes a high degree of neighborhood controversy. Staff has no strong objection to Option A, which requires a public hearing for all C-1 zone restaurants with liquor licenses. The Liquor License Board provides a forum for objections to a specific license application. Pima County's experience suggests the majority of applications will be approved without objection. The cost to the restaurant owner will be dealing with the delay caused by the public hearing.

Background: The Planning Commission has discussed this item in two public hearings held on August 2nd and October 4th. On October 4th, the Planning Commission continued the public hearing to November 1st and requested that staff provide additional information responsive to their questions. Some of the issues and questions raised by the Planning Commission were discussed as a part of the October 4th public hearing.

Staff originally presented an amendment that eliminated the Special Exception approval currently required for restaurants with full alcohol service. During the August 2nd public hearing, two members of the public spoke in opposition to the proposed amendment and expressed concerns regarding the possible adverse consequences to existing neighborhoods if an amendment eliminating the special exception provision was adopted. The Planning Commission directed staff to develop an amendment that addressed the concerns expressed.

At the October 4th hearing, staff presented an alternative amendment that required a special exception for restaurants serving alcoholic beverages that are located in the C-1 zone, within 300 feet of residentially zoned property. The amendment included provisions that required the applicant to submit a mitigation plan and allowed for the suspension of the use if the conditions of the mitigation plan were violated. Outdoor service of alcohol was also prohibited for establishments located within proximity to residential zones. No one from the public attended or spoke at the October 4th public hearing.

Staff has included two alternative amendments (Option A and Option B). A copy of each option is provided as Attachment A and B.

Additional Information: A summary of the additional information the Commission requested is provided below:

- *The number of restaurants that serve alcoholic beverages in the C-1 Zone.* – Staff obtained data from the City's Finance Department and overlaid the information onto the GIS zoning data to determine the number of restaurants serving alcohol that are located in the C-1 zone and how many of those were located within 300 feet of residentially zoned property. The results indicate that there are a total of 380 restaurants in Tucson that serve alcohol. Of those, 164 restaurants are located in the C-1 zone and 155 are located within 300 feet of residentially zoned property. Approximately 45 of these restaurants serve beer and wine only and would become nonconforming uses if Option A were adopted.
- *Why was 300 feet selected as the appropriate separation distance?* – Three hundred feet is the distance used by the City for public notification of Board of Adjustment and rezoning cases. In addition, Title 4 of the Arizona Revised Statutes requires 300 feet of separation between uses with certain liquor licenses and schools and/or churches.
- *How many complaints has the City received and does the size of the establishment have anything to do with the number of complaints received?* – Staff contacted the Tucson Police Department to obtain statistics concerning the number of nuisance complaints associated with restaurants serving alcohol. Specific information is unavailable because the department does not track such information by parcel but instead, the crimes are coded to a street location. In many cases of noise and other nuisance complaints, the address entered on the report is the address of the complainant, not the offender. How the address is entered on the report depends upon the situation and the judgement of the officer taking the report.
- *What does Pima County require and how is it working for them?* – Staff contacted the Pima County planner that reviews conditional use permit applications. Approximately six Type 1 conditional use permits are applied for annually in Pima County for restaurants that serve alcohol. In the past six years all applications have been approved and the planner said that he remembered only twice that anyone from the public attended the public hearing and it was to obtain information only. He was unable to recall any incidences where the public protested. The planner also speculated that the process could be eliminated because typically there is no controversy that results.
- *Why is outdoor service excluded on the proposed amendment and has it been problematic?* – The provision in Option A that precluded outdoor service for restaurants serving alcohol within 300 feet residential zones has been removed. Originally this provision was included

as another means to mitigate potential noise nuisance on nearby residences. Information indicating that outdoor service has been a problem is unavailable.

- Are there other provisions in the LUC that require a mitigation plan? – The LUC currently requires the submittal of a mitigation plan as part of the application for a modification of development regulation (MDR) in the Rio Nuevo and downtown area and in the Environmental Resource Zone (ERZ). Noise mitigation plans are required in Section 3.5.9.7 *Large Retail Establishment Design Criteria*, and in Section 3.5.4.4 *Entertainment*, as part of the performance criteria for concerts, dances and other high noise activities when in proximity to residential zones. Mitigation plans are typically submitted as part of the application to the Development Services Department.
- Public Processes associated with restaurants serving alcohol. – During the October 4th public hearing the Planning Commission requested information regarding the number of public hearings/opportunities for public input associated with the process of obtaining a liquor license.

When the Arizona Department of Liquor License and Control (ADLLC) receives an application for a liquor license, a copy of the application is forwarded to the City of Tucson. The City posts a notice on the premise proposed to be licensed with a hearing date and a statement that any person residing, owning or leasing property within a one mile radius from the premise may file written arguments in favor or in opposition to the issuance of the liquor license with the City Clerk's office. The letter must be filed within twenty days of the posting of the notice. After the hearing, the City makes a recommendation to the State Liquor Board to either grant or deny the license. If the City recommends disapproval or gives a "no recommendation," the Board will hold a hearing to consider the recommendation and any persons residing, owning or leasing property within a one-mile radius of the premise may register as protesters with the state liquor board.

If the City recommends approval then no hearing is required, unless the ADLLC director, the board or any aggrieved party requests a hearing on the grounds that the best interest of the community will not be substantially served if a license is issued.

The proposed LUC amendment, Option A, provides another opportunity for a public hearing before the Zoning Examiner to ensure that potential land use impacts to residential areas are mitigated.

Description of Amendment Options: - The following is a description of the two alternative amendments.

Option A: Option A modifies specific sections of the LUC to be consistent with State law regarding the hours of service, the type of alcohol served and the definition of restaurant. In addition, Option A requires approval as a special exception land use through the Zoning

Examiner Full Notice Procedure for establishments with liquor service located in the C-1 zone and within 300 feet of a residential zone. The applicant will be required to submit a mitigation plan that addresses issues such as: noise, screening of vehicle headlights, site/parking lot lighting, parking access and access to adjacent neighborhoods. If the establishment operates in a manner that violates the conditions of the mitigation plan and causes adverse land use impacts, the use may be suspended.

Option B: Option B modifies the same sections as Option A to provide consistency with State law regarding the hours of service, the type of alcohol served and the definition of restaurant. Option B also eliminates the provision requiring approval as a special exception land use for restaurants that serves alcohol in addition to beer and wine.

Amendment Analysis:

Option A: The key provisions include:

- Modify the Performance Criteria required for Food Service in Section 3.5.4.7 A. and in the definition, Section 6.2.18 B. to include the hours of food service operation consistent with State statutes.
- Reference the state statute regarding the gross revenue sale of food in the LUC definition of restaurant in Section 6.2.18.
- Eliminate the reference in Section 3.5.4.7 D. that limits service to beer and wine only.
- Require submittal of a mitigation plan that addresses noise, screening, light standards used on site and access for establishments located within 300 feet of residentially zoned property.
- Require approval through the Zoning Examiner's Full Notice Procedure for establishments located within 300 feet of residentially zoned property including:
 1. Pre-application conference,
 2. Public notice mailed to all property owners within 300 feet of the project site and neighborhood associations within one mile,
 3. Neighborhood meeting offered 15-60 days prior to submittal of the application,
 4. Staff review of application,
 5. Zoning Examiner's public hearing within 70 days of acceptance of the application,
 6. Zoning Examiner's decision,
 7. Appeal (if applicable).

Option A will result in nonconforming status for 45 existing restaurant. As such, these establishments will require approval as a special exception land use through the Zoning Examiner Full Notice Procedure before modifications to the facility can be made. This procedure requires 3-4 months to complete.

Option B: The key provisions include:

- Modify the Performance Criteria required for Food Service in Section 3.5.4.7 A. and in the definition, Section 6.2.18 B. to include the hours of food service operation consistent with State statutes.
- Reference the state statute regarding the gross revenue sale of food in the LUC definition of restaurant in Section 6.2.18.
- Eliminate the reference in Section 3.5.4.7 D. that limits service to beer and wine only.
- Eliminate the Special Exception process in Section 2.5.3.3 A. required for alcoholic beverage services that are secondary uses to food service in the C-1 zone.

The Mayor and Council requested this *LUC* amendment (Option B) as a result of an appeal to reverse the Zoning Examiner's decision regarding a special exception land use case in February 2006. The opportunities for public input are provided by the state and through a hearing before the Mayor and Council and to require a third opportunity is excessive.

Conclusion: Staff recommends that the Planning Commission forward Option B to the Mayor and Council for adoption. As described, adequate opportunities for public input are provided through the process used by the Arizona Department of Liquor License and Control, including a hearing before Mayor and Council. Option B will not add another public process that significantly increases the approval time and will not result in creating a nonconforming status for 45 existing restaurants.

Attachments:

Attachment A - Proposed Option A
Attachment B – Proposed Option B